FILED
APR 15 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1090.

THE UNITED STATES OF AMERICA, - - Petitioner,

versus

PEARLIE LAWSON, Administratrix of the Estate of Hobart Lawson, Deceased, and
JOHN A. POLIN, Administrator of the Estate of Henry Lawson, Beneficiary, Deceased, - Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

BLAKEY HELM,
Attorney for Respondents.

JOHN C. DOOLAN,
THOMAS J. WOOD,
NELSON HELM,
Of Counsel.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	3
Argument	3–5
Conclusion	5

CITATIONS.

Cases:	PAGE
U. S. v. Pearlie Lawson, Admx. etc., 124 Fed. (2d) 1020	1
U. S. v. American Nat. Bank & Trust Co., etc., 124 Fed. (2d) 743	2, 3
Florian v. U. S., 114 Fed. (2d) 990	4
Statutes:	
§305, World War Veterans' Act, as amended (U. S. C. A., Title 38, §516)	2, 5
42 Statutes at Large 156	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1090.

THE UNITED STATES OF AMERICA, - - *Petitioner,*

v.

PEARLIE LAWSON, ADMINISTRATRIX OF THE ESTATE OF HOBART LAWSON, DECEASED, AND JOHN A. POLIN, ADMINISTRATOR OF THE ESTATE OF HENRY LAWSON, BENEFICIARY, DECEASED, - - - - - *Respondents.*

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

As stated in petition.

JURISDICTION.

As stated in petition.

QUESTIONS PRESENTED.

As stated in petition.

Neither of the questions stated is included under any of the approved grounds mentioned in Rule 38, and neither presents any question of great importance. The questions presented have been answered in the same way by the Court of Appeals of the Sixth Circuit (this case, reported 124 Fed. (2d) 1020) and by the Court of Appeals of the Seventh Circuit, in United States v. American National Bank & Trust Co., etc., 124 Fed. (2d) 743.

STATUTES INVOLVED.

The only statute involved in this action is Section 305, World War Veterans' Act, as amended (U. S. C. A., Title 38, §516). This statute specifically provides for the insurance involved in the following words:

> "Where any person has heretofore allowed his insurance to lapse, * * * while suffering from a compensable disability for which compensation was not collected and dies or has died * * * and at the time of such death * * * was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, * * * would purchase if applied as premiums when due, shall not be considered as lapsed * * *."

STATEMENT.

The statement in the petition is sufficient.

ARGUMENT.

I.

Petitioner refers to its petition in Docket No. 1038, U. S. of America v. American National Bank & Trust Co., etc., for the specifications of error. Its first specification claims some difference between compensation accruing after existence of permanent total disability and compensation accruing theretofore. Section 305 makes no such distinction but merely authorizes maturity of the insurance where "entitled to compensation remaining uncollected."

II.

The second specification is based upon a claim that death is eliminated as a basis for maturing revived insurance, when the insurance might have matured on a previous basis of maturity. The statute authorizes maturing of such revived insurance when the insured "dies or has died, or becomes or has become permanently and totally disabled." The statute now provides for alternate contingencies for maturing insurance; it makes no provision for either being the exclusive ground. Revived insurance was first authorized only in case of death (42 Stats. 156).

III.

The third specification excepts to a holding precluding the Government from claiming existence of total permanent disability. No such holding appears in this case. The statute includes no reference to an excuse from liability if either contingency for maturing the insurance exists.

IV.

The fourth specification claims this decision overturns a long established custom. There is *no finding of fact* or *conclusion of law supporting such custom.* With the stipulation of facts was filed a letter with reference to an administrative interpretation in the Veterans Administration with reference to the maturing of insurance. Neither the stipulation of facts nor the letter shows that the administrative interpretation had been followed in any case. The letter dated August 28, 1939, from the Administrator of Veterans Affairs does not cite a single case involving such a decision.

There is no showing in this case of any consistent or long established administrative practice, and this question had not arisen in any reported cases until the case of Florian v. U. S., 114 Fed. (2d) 990. Furthermore, the so-called administrative interpretation squarely conflicts with the Act and hence is clearly erroneous.

V.

The judgment of the District Court applied specifically the statute according to its provisions. The Circuit Court of Appeals recognized that this application of the statute, specifically followed its wording and intent. The petitioner asks the court to write into the statute provisions for eliminating liability in one of the alternate contingencies, while the statute provides for liability on either of the alternate bases for maturing the insurance.

CONCLUSION.

Section 305 is clear. The interpretation given by the Circuit Court of Appeals directly follows it. The decision concurs with the interpretation given by the Court of Appeals for the Seventh Circuit. There is no conflict between courts. The petition should be denied.

BLAKEY HELM,
Attorney for Respondents.

JOHN C. DOOLAN,
THOMAS J. WOOD,
NELSON HELM,
Of Counsel.